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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

RAPHAEL IRVING, Plaintiff and Appellant, v. RODERICK DAVIS et al., Defendants and Respondents.	B299134 (Los Angeles County Super. Ct. No. BC616918)

APPEAL from a judgment of the Superior Court of Los Angeles County. Teresa A. Beaudet, Judge. Affirmed.

Raphael Irving, in pro. per., for Plaintiff and Appellant.

Roderick Davis, in pro. per., for Defendant and Respondent.

Berman, Berman, Berman, Schneider & Lowary, Mark E. Lowary and Gina M. Genatempo for Defendants and Respondents.

In this appeal, Raphael Irving challenges the trial court's finding that he is a vexatious litigant as defined in Code of Civil Procedure section 391 et seq.[1] We find Irving has forfeited his claims of error on appeal. Even if he has not, we conclude the trial court did not err to deem Irving a vexatious litigant who is required to furnish security in the amount of $85,000. We affirm.

PROCEDURAL HISTORY

In 2016, Irving brought suit against Greater New Bethel Baptist Church, Inc., Greater New Bethel Baptist Church, Inc. Official Board of Management, Earl A. Pleasant, Ronald Nezey, and Rikki T. Ferrell (collectively, the Greater New Bethel defendants) for defamation and other claims. He alleged he was improperly rejected as a pastoral candidate because Greater New Bethel failed to abide by its bylaws in conducting the pastoral election and Pleasant made false statements about Irving during the election.

The Greater New Bethel defendants moved to strike Irving's complaint pursuant to section 425.16, the anti-strategic lawsuits against public participation (anti-SLAPP) statute. The trial court granted the anti-SLAPP motion and Irving appealed from the order. We affirmed, finding Irving had forfeited his claims on appeal by failing to cogently address the anti-SLAPP issues with appropriate citations to authorities and the record. (*Irving v. Greater New Bethel Baptist Church, Inc.* (Oct. 2, 2018, B279002) [nonpub. opn.].)

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[1] All further section references are to the Code of Civil Procedure unless otherwise specified.

On November 14, 2018, before the remittitur issued, Irving filed a motion for trial setting and a motion for discovery. In January 2019, after the remittitur issued, Irving named 52 new defendants previously identified as Doe defendants to his lawsuit. Eleven of the new defendants were served and appeared in the action. They are Willie Brunson, Beverly Brunson, Glenn Ford, Allen Hughes, Melvin Lewis, Carlethea Cooley, William Brooks, Scott Straughter, Roderick Davis, Dorothy Wilson, and Marion Wilson (the Doe defendants).

All defendants[2] requested the trial court deem Irving a vexatious litigant pursuant to section 391 et seq. They identified 10 "unmeritorious" separate filings made by Irving as the basis for their motion: "(1) a Declaration filed August 3, 2016, which essentially recounts Plaintiff's allegations against Defendants, (2) an 'objection' to the anti-SLAPP motion, which included requests to produce documents from Defendants, filed August 18, 2016, (3) an amended 'objection' filed on August 23, 2016, (4) a reply in support of the amended 'objection' filed on September 6, 2016, (5) an 'objection' to demurrer, filed October 25, 2016, (6) a trial brief filed December 7, 2016, after the notice of appeal of the Order had been filed, (7) a motion for discovery filed prior to remittitur on November 14, 2018, (8) a motion for trial setting

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[2] Initially, the vexatious litigant motion was filed on behalf of all defendants. After the motion was granted, the Greater New Bethel defendants withdrew from the vexatious litigant proceedings in order to retain an attorney fees award previously ordered by the trial court. As a result, the Greater New Bethel defendants are not parties to Irving's appeal regarding the vexatious litigant proceedings.

filed prior to remittitur on November 14, 2018, (9) an 'objection' to Defendants' ex parte application filed March 18, 2019, and (10) a motion to disqualify defense counsel."

The defendants argued the filed documents were procedurally defective, contained irrelevant argument, and restated Irving's claims against the Greater New Bethel defendants. The trial court agreed. It also found Irving had no reasonable probability of prevailing against the Doe defendants because the first amended complaint failed to allege any misconduct, statements, or omissions by the Doe defendants. As a result, the trial court found Irving's filings unreasonably impacted the defendants and the court. The court deemed Irving a vexatious litigant and ordered him to furnish security in the amount of $85,000 under section 391.3.

When he failed to do so, the trial court dismissed the matter as to the 11 Doe defendants and the parties stipulated to dismiss without prejudice the remaining defendants who had been named, but had not been served or appeared. Irving appealed.

DISCUSSION

I. Appealability

We first address the Doe defendants' argument that the order deeming Irving a vexatious litigant and requiring he post security is not an appealable order. We agree that such an order is not directly appealable. (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 635 [cases cited within].) However, an appeal does lie from the subsequent dismissal order or judgment if the plaintiff fails to furnish security as required. (*Ibid.*)

It is well established that a notice of appeal "must be liberally construed" in favor of its sufficiency. (Cal. Rules of

Court, rule 8.100(a)(2); *Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 20.) "This policy is especially vital where the faulty notice of appeal engenders no prejudice and causes no confusion concerning the scope of the appeal." (*Norco Delivery Service, Inc. v. Owens-Corning Fiberglas, Inc*. (1998) 64 Cal.App.4th 955, 960–961 (*Norco*).) Therefore, a notice of appeal erroneously specifying a nonappealable order, rather than the appealable judgment itself, may be construed as being taken from the appealable order or judgment. (See *Kasparian v. AvalonBay Communities, Inc.* (2007) 156 Cal.App.4th 11, 14; *Dominguez v. Financial Indemnity Co.* (2010) 183 Cal.App.4th 388, 391.)

Here, Irving filed two notices of appeal. One noticed an appeal from the trial court's June 4, 2019 order granting the defendants' motion to declare Irving a vexatious litigant and requiring he post security in the amount of $85,000. The second notice of appeal specified that Irving appealed from a July 16, 2019 "Judgment [on anti-SLAPP] under Code of Civil Procedure § 425.16(c)." Although the July 16, 2019 judgment also included a dismissal of Irving's action against the Doe defendants for failure to post the required security, his notice of appeal does not specify that portion of the judgment is encompassed in the appeal. We consolidated the two appeals upon the Doe defendants' motion.

We conclude these notices of appeal, taken together, are sufficient to perfect the appeal on the vexatious litigant issue. Although the first notice of appeal was from a nonappealable order and the second notice of appeal failed to specify that it encompassed the vexatious litigant issue, there was no prejudice to the parties and it did not cause any confusion concerning the

scope of the appeal. (*Norco, supra,* 64 Cal.App.4th at pp. 960–961.) In their motion to dismiss or consolidate, the Doe defendants acknowledged, "At issue in both appeals are orders of the trial court on the motion by Respondents (and other now dismissed defendants) to have Appellant Irving deemed a vexatious litigant pursuant to Cal. Code of Civil Procedure § 391 et seq., and the resulting dismissal(s)." We thus liberally construe Irving's notices of appeal to find them sufficient.

II. Forfeiture

In Irving's previous appeal, this court concluded he forfeited any claims of error by failing to provide meaningful or cogent argument in his briefing. (*Irving v. Greater New Bethel Baptist Church, Inc.*, *supra*, B279002.) The deficiencies noted in the previous opinion have not been corrected in this appeal.

The rules of appellate practice are well-established and bear repeating: an appellant has the duty to support his challenge with cogent argument, citations to relevant authorities, and accurate references to the record. "If an appeal is pursued, the party asserting trial court error may not then rest on the bare assertion of error but must present argument and legal authority on each point raised." (*Boyle v. CertainTeed Corp*. (2006) 137 Cal.App.4th 645, 649.) "[C]iting cases without any discussion of their application to the present case results in forfeiture. . . . [and] [w]e are not required to examine undeveloped claims or to supply arguments for the litigants." (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52; Cal. Rules of Court, rule 8.204.) Irving's status as a self-represented litigant does not relieve him of these obligations. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

Irving's briefs on appeal contain a plethora of arguments not related to the issue at hand, including repeating his grievances regarding Greater New Bethel's handling of his pastoral candidacy and questioning whether the attorneys who represented the Greater New Bethel defendants and the Doe defendants were properly retained.[3] After parsing through these unrelated issues, we can discern only a few arguments directly addressing the vexatious litigant order. We find they are not supported by meaningful argument, citations to the record, or citations to legal authority.

First, Irving faults the trial court for failing to specifically identify which of his filings were unmeritorious, but ignores the

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[3] By affidavit filed May 5, 2020, Roderick Davis, one of the Doe defendants, advised this court that he never retained or authorized defendants' counsel, Berman, Berman, Berman, Schneider & Lowary LLP (Berman), to represent him as an individual in this matter. Davis claims he is self-represented. He further asserts Berman was not properly retained under the bylaws of Greater New Bethel Baptist Church to represent the church in this matter. He demands we order Berman to prove it was properly retained by the church or by Davis. No other defendant claims Berman does not represent them.

We do not dispute Davis is entitled to represent himself in this appeal. Moreover, Greater New Bethel Baptist Church is not a party to this appeal (see *ante*, fn, 2). Given these circumstances, we deny Davis' request. Moreover, we find Davis' claims of improper representation to be irrelevant to our disposition of this case; none of his filings address the subject of this appeal, which is whether Irving is a vexatious litigant.

10 motions and objections set forth in the court's order. Next, Irving argues the vexatious litigant statutes are unconstitutional, yet fails to cite to any clause in the United States or California Constitutions or any other legal authority to support his argument.[4] Irving also contends the trial court erred when it failed to "reset" the vexatious litigant motion and consider it with only the Doe defendants when Greater New Bethel withdrew from the motion. Irving presents no authority to support such a requirement and fails to explain what changed circumstance would require it when the motion was brought on behalf of all defendants.

Lastly, Irving asserts his causes of action have legal merit and are likely to prevail in a jury trial. However, he merely reargues those points which were rejected by the trial court in the anti-SLAPP proceedings. Notably, he fails to explain how his claims against the Doe defendants, who are not alleged to have made any of the purportedly defamatory statements, could be successful when they were not against Pleasant, who is the only person alleged to have made the defamatory statements. By failing to adhere to the basic rules of appellate procedure, Irving has again forfeited his claims on appeal. (*Okorie v. Los Angeles Unified School Dist.* (2017) 14 Cal.App.5th 574, 599–600.)

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[4] Irving only refers to a violation of the "the life, liberty, and pursuit of happiness clause," which is found in the Declaration of Independence. He fails to explain how a violation of that clause may form the basis for a constitutional violation.

III. The Trial Court Did Not Err to Deem Irving a Vexatious Litigant and to Require Security

In any case, we find the trial court did not err when it deemed Irving a vexatious litigant and required him to furnish security pursuant to section 391.1.

"The vexatious litigant statutes (§§ 391–391.7) are designed to curb misuse of the court system by those persistent and obsessive litigants who, repeatedly litigating the same issues through groundless actions, waste the time and resources of the court system and other litigants." (*Shalant v. Girardi* (2011) 51 Cal.4th 1164, 1169–1170 (*Shalant*).) A vexatious litigant is defined, in relevant part, as a person who "[i]n any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay." (§ 391, subd. (b)(3).) The statute does not quantify the word "repeatedly" and it is left to the sound discretion of the trial court to decide what number of filings fulfills the statutory requirement. (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 970–971 (*Morton*).)

"Section 391.1 provides that in any litigation pending in a California court, the defendant may move for an order requiring the plaintiff to furnish security on the ground the plaintiff is a vexatious litigant and has no reasonable probability of prevailing against the moving defendant." (*Shalant*, *supra*, 51 Cal.4th at p. 1170.) If, after a hearing, the court orders the plaintiff to furnish security and the plaintiff does not do so, the action will be terminated. (*Ibid.*)

A court exercises its discretion in determining whether a person is a vexatious litigant. (*Garcia v. Lacey* (2014)

231 Cal.App.4th 402, 407.) We review the trial court's vexatious litigant finding for substantial evidence. (*Morton, supra*, 156 Cal.App.4th at p. 969.) We are required to presume the order declaring a litigant vexatious is correct and imply findings necessary to support that designation. (*Ibid*.) A reversal is required only where there is no substantial evidence to imply findings in support of the vexatious litigant designation. (*Ibid*.)

The record contains substantial evidence demonstrating Irving is a vexatious litigant as defined by section 391, subdivision (b)(3). The record shows Irving filed 10 motions or "objections," three of which were filed while the previous appeal was pending and the trial court lacked jurisdiction to consider them. The trial court characterized Irving's motions for trial setting and discovery as "fairly unintelligible" and found "the relief sought in each motion is not grounded in any applicable legal authority, statutory or otherwise." Irving's other filings often included unrelated requests for discovery or other relief which were not part of the subject of the motion. Irving also repeatedly set out in his filings the corporate bylaws and rules of Greater New Bethel Baptist Church, the grievances he had with the church's treatment of his pastoral candidacy, and the failure of the church to properly retain counsel pursuant to its bylaws.

Moreover, Irving sought to include 52 additional defendants in the matter after the anti-SLAPP order was affirmed. Although he did not amend his complaint to attribute any statements or conduct to these 52 defendants, they would have been required to appear and respond to his claims or suffer default. Given these circumstances, the trial court did not err to find that Irving was a vexatious litigant who repeatedly litigated the same issues and wasted the time and resources of the court

system and other litigants. (*Shalant, supra,* 51 Cal.4th at pp. 1169–1170; see also *Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 225-226 [the court found approximately 20 motions constituted "repeated" filings because they all arose during the same action and many of the motions were identical to motions previously brought and denied]; *Goodrich v. Sierra Vista Regional Medical Center* (2016) 246 Cal.App.4th1260, 1265 [filing of three motions in the same court seeking the same relief relating to the same final judgment sufficient to deem a litigant vexatious].)

Moreover, Irving has no reasonable probability of prevailing in his action against the Doe defendants and thus, the trial court did not abuse its discretion to require Irving to post security. The trial court reasoned, "in light of the anti-SLAPP Order, the Court finds that Plaintiff has no reasonable probability of prevailing against the remaining defendants in this action. The Court notes that Plaintiff offers no argument or evidence in opposition to the instant motion to demonstrate a reasonable probability of prevailing on his claims against the remaining defendants."

The record supports the trial court's finding. The first amended complaint alleges claims for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, and vicarious liability. These claims are predicated on conduct and statements made by Pleasant. No specific conduct or statements have been attributed to the 11 Doe defendants. Aside from the conclusory assertion that he has a probability of prevailing against them, Irving has provided no factual or legal argument to contradict the trial court's conclusion that the anti-SLAPP order would also apply to the Doe defendants.

We also reject Irving's contention that security in the amount of $85,000 is unjustified. Irving argues that amount is punitive because it does not reflect the cost of defending the new defendants. According to Irving, there would be no additional cost to defend the Doe defendants. Irving's argument is plainly baseless.

" 'Security' means an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant." (§ 391, subd. (c).)

At the time of the vexatious litigant motion, Irving had not yet agreed to dismiss the remaining defendants and there remained approximately 40 additional defendants who had not appeared in the matter. As a result, defense counsel requested $250,000 in security, estimating that its fees for preparing anti-SLAPP motions, demurrers, and motions to strike on behalf of the new defendants to be over $87,000. It also estimated fees for services rendered past the pleadings stage to exceed $100,000. The trial court was entitled to accept defense counsel's estimate. It appears the trial court did not believe the matter would go beyond the pleadings stage and set the amount of security at $85,000. The trial court did not err to require security in this amount.

DISPOSITION

The judgment is affirmed. The Doe defendants to recover their costs on appeal.

BIGELOW, P. J.

WE CONCUR:

GRIMES, J.

WILEY, J.